

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

GE RENEWABLES NORTH AMERICA, LLC,

Plaintiff,

v.

Case No.: 1:23-cv-09274-PKC

SKF USA INC.

Defendant.

**NOTICE OF MOTION TO DISMISS OR, IN THE ALTERNATIVE,
TO TRANSFER VENUE, OR COMPEL ARBITRATION**

PLEASE TAKE NOTICE that, upon the annexed Amended Complaint; the accompanying Memorandum of Law in Support of Defendant's Motion to Dismiss or, in the Alternative, to Transfer Venue, or Compel Arbitration; the accompanying Declaration of Jeffrey Marchozzi in Support of Defendant's Motion to Dismiss the Complaint or, in the Alternative, to Transfer Venue, or Compel Arbitration; the accompanying Declaration of C. Neil Gray in Support of Defendant's Motion to Dismiss the Complaint or, in the Alternative, to Transfer Venue, or Compel Arbitration, and the exhibits annexed thereto; and all papers and proceedings herein, Defendant will move this Court before the Honorable P. Kevin Castel, United States District Court, 500 Pearl Street, Courtroom 11D, New York, New York, at a date and time to be determined, for an Order dismissing the Amended Complaint in this matter with prejudice under Federal Rules of Civil Procedure 12(b)(2), (3), and (6), or, in the alternative, transferring this matter to the United States District Court for the Northern District of Georgia or compelling Plaintiff to arbitrate its claims, pursuant to 28 U.S.C. § 1406(a) or 1404, and granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
April 26, 2024

DUANE MORRIS LLP

By: /s/ C. Neil Gray

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GE RENEWABLES NORTH AMERICA, LLC,

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v.

SKF USA INC.,

Defendant.

No. 23 Civ. 9274 (PKC)

AMENDED COMPLAINT

Plaintiff GE Renewables North America, LLC (“GERNA”), for its Amended Complaint against Defendant SKF USA Inc. (“SKF”), alleges through its undersigned counsel as follows:

Introduction

1. This is an action for breach of contract and breach of warranty arising from purchases of SKF main bearings by Gerna for use in wind turbines for power generation. The main bearings were designed by SKF to conform to a Gerna technical specification, which required a service life of 20 years. However, SKF main bearings have experienced failures within only two or three years of commercial operation.

2. As of May 2023, 389 of the SKF main bearings have failed or are showing signs of imminent failure. Of these, 266 have been replaced at Gerna’s expense. GE’s replacement costs through May 2023 total \$75 million, or roughly \$280,000 for each replacement. When all 389 failed bearings are eventually replaced, the cost to GE will be at least \$107 million.

3. SKF has not reimbursed Gerna for any replacement costs. In this action, Gerna seeks to recover its replacement costs, as well as other costs and expenses arising from the SKF main bearing failures. Gerna also seeks a declaratory judgment that SKF is liable for expected *future* failures of SKF main bearings.

The Parties

4. GERNA is a limited liability company organized under the laws of Delaware with its principal place of business at 8301 Scenic Highway, Pensacola, Florida. GERNA also maintains an office at 1 River Road, Schenectady, New York. The sole member of GERNA is General Electric Company (“GE”), a New York corporation with its principal place of business at 5 Necco Street, Boston, Massachusetts. GERNA manufactures and sells, among other products, wind turbines for power generation.

5. SKF is a Delaware corporation with its principal place of business at 890 Forty Foot Road, Lansdale, Pennsylvania. SKF manufactures and sells, among other products, main bearings for wind turbines.

Jurisdiction and Venue

6. This Court has diversity jurisdiction under 28 U.S.C. § 1332. GERNA and SKF are citizens of different states and the amount in controversy is greater than \$75,000.

7. This Court has personal jurisdiction over SKF because the parties submitted to the jurisdiction of the Court by agreement and because the claims in this action arise from the purchase of goods by GERNA in New York.

8. Venue is proper in this district by agreement of the parties and pursuant to 28 U.S.C. § 1391(b)(3) because SKF is subject to the Court’s personal jurisdiction.

Relevant Facts

GERNA Purchases of SKF Main Bearings

9. GERNA purchased main bearings from SKF for GE’s 2 MW line of onshore wind turbines from 2017 to 2019. The main bearing is a key component of a wind turbine. It holds the shaft connecting the rotor to the generator, and allows the shaft to rotate freely despite being subject to substantial loads during normal operations. The SKF main bearing consists of an inner

ring (or “raceway”) attached to the shaft and an outer ring attached to the turbine casing. In between these rings are two rows of spherical rollers, with 30 rollers in each row, held in place by a cage. The rollers allow the inner ring to rotate independently from the outer ring.

10. The SKF main bearings were a “build to spec” part. GERNA provided a part specification to SKF, and SKF designed a main bearing to meet the specification. The final specification for this part is dated November 15, 2017, and it incorporates a technical specification and various load specifications. The technical specification document (446W4128) includes requirements on dimensions, weight, materials and reliability.

11. The GERNA technical specification makes it clear that the main bearing must have a useful life of 20 years. Section 1 states: “The main bearing has to handle loads for the specified wind class for a period of 20 years. In addition, it must sustain transient loads like grid failure, over-speed events, braking and emergency stops as well as loads due to extreme wind and environmental conditions.”

12. Consistent with this, Section 3.4.1.4 of the technical specification, which is titled “Service Life,” states that the main bearing “shall be designed for 20 years under full load conditions” and “[t]he usage rate for this component is defined as 100% of the operating period, or 175,200 hours (20 years).” The technical specification also requires the supplier (here SKF) to provide a list of any “limited life components” and to provide a maintenance plan to support the Service Life requirement.

13. The design process for the SKF main bearing took place in 2016 and 2017. The final SKF design used, among other elements, a floating guide ring and a diamond-like carbon coating on the rollers. The GE part number assigned to the SKF main bearing is 446W2140. The SKF part number is 240/750 ECA/W33V039RE10.

14. The SKF main bearings were primarily used in GERNA's 2.5 megawatt, 127 meter wind turbine, which was launched in July 2018. For this product, 2.5 megawatt is the electrical output capacity and 127 meters is the diameter of the rotor. The same main bearings, without any design change, were also used in GERNA's 2.8 megawatt, 127 meter wind turbine, which launched in 2020. Some SKF main bearings of this design were also installed in GERNA's 2.5 and 2.7 megawatt, 116 meter wind turbines.

15. GERNA began ordering this part from SKF in November 2017 through purchase orders ("POs") issued from its office in Schenectady, New York. GERNA has purchased a total of 1,723 SKF main bearings, with 10 units ordered in 2017, 1,306 units ordered in 2018 and 407 units ordered in 2019. For a number of reasons, including dissatisfaction with the floating guide ring design used by SKF, GE discontinued purchasing SKF main bearings after June 2019.

16. GERNA's 2.5 megawatt wind turbines using SKF main bearings began going into commercial operation at wind farms in November 2018. SKF main bearings were used in 1,380 wind turbines in commercial operation throughout the United States. GERNA's entire fleet of 2.x-116 and 2.x-127 wind turbines with installed main bearings comparable to SKF includes approximately 8,000 units. GERNA uses main bearings from three other original equipment manufacturers, supplying respectively 3,200 units, 2,850 units and 350 units. The main bearing design is different for each manufacturer, but all main bearings were designed using substantially the same technical specification from GERNA.

Purchase Terms and Conditions

17. GE, acting through its GE Power & Water business, and SKF were parties to a Supply Agreement effective as of January 1, 2015 (the "Supply Agreement"). The Supply Agreement applies to POs issued by GE and its affiliates for specific components, which were listed by SKF part number in an attached Appendix 1. When the Supply Agreement was

executed in 2015, the SKF main bearings at issue in this action had yet to be designed, so they are not listed in the original Appendix 1.

18. Section 1(c) of the Supply Agreement states that purchases are governed by “GE Power & Water Standard Terms of Purchase Rev. A (the ‘Purchase Terms’) which are incorporated by reference as Appendix 2, and any agreed updates, changes and modifications to the same.”

19. The Purchase Terms attached to the Supply Agreement contain various express warranties. Among other warranties, the Seller warrants that goods will be “free from all defects in workmanship and materials” and “provided in strict accordance with all specifications, samples, drawings, designs, descriptions or other requirements as described in the qualification documentation and qualification process approved and adopted by Buyer and any subsequent changes made by Buyer thereto.” For goods designed by the Seller, the “Seller also warrants that such goods were designed by Seller to meet Buyer’s specifications.” The express warranties in the Purchase Terms apply for a period of 24 months from the Date of Commercial Operation of the wind turbine the Buyer supplies to its customer.

20. In the event of a defective or nonconforming good, the Purchase Terms attached to the Supply Agreement call for a root cause analysis (“RCA”) to be performed in order to determine whether the defective or nonconforming good is not in conformity with the Seller’s warranty obligations. In addition, the Purchase Terms define the term “Serial Defect” to refer to a situation where “the defective or nonconforming good exhibits the same or similar defect or nonconformity as a prior defective or non-conforming good which was the subject of a prior RCA.” In the case of a Serial Defect, the Purchase Terms provide that “Seller shall replace the defective or nonconforming goods irrespective of whether the goods actually exhibit the

nonconformity or defect and be responsible for all direct damages, costs and expenses emanating from the defective or nonconforming goods, including without limitation, all installation and removal costs.”

21. Through a corporate reorganization in November 2015, the renewables business was removed from the GE Power & Water business and rebranded as GE Renewable Energy. On March 18, 2016, the GE Renewable Energy business revised its standard terms of purchase in a document titled “GE Renewable Energy Terms of Purchase Rev. A – U.S” (the “2016 Purchase Terms”).

22. The 2016 Purchase Terms contain various express warranties. Among other warranties, the Seller warrants that goods will be “free from all defects in design, workmanship and material,” “fit for the particular purpose for which they are intended” and “provided in strict accordance with all specifications, samples, drawings, designs and descriptions or other requirements approved or adopted by Buyer.” These express warranties apply for a period of 24 months from the Date of Commercial Operation for the wind turbine.

23. The 2016 Purchase terms also provide for indemnification. Specifically, they state: “The Supplier shall defend, indemnify, release and hold Buyer . . . harmless from and against any and all claims, legal actions, demands, settlements, losses, judgments, fines, penalties, damages, liabilities, costs and expenses of any nature whatsoever, including, all attorneys’ fees (collectively, ‘Claims’) arising from any act or omission of Supplier . . . except to the extent attributable to the sole and direct gross negligence of Buyer.”

24. The 2016 Purchase Terms provide that POs shall be governed by the substantive law of the State of New York. They further provide that any dispute arising from a PO shall be brought in the U.S. District Court for the Southern District of New York or, if such court lacks

subject matter jurisdiction, in the Supreme Court of the State of New York in and for New York County. Finally, they provide that “[t]he parties submit to the jurisdiction of said courts and waive any defense of forum non conveniens.”

25. On or about December 14, 2017, GE and SKF amended the Supply Agreement in an Addendum Number Two (the “Addendum”). The Addendum added SKF part number 240/750 ECA/W33V039RE10 to Appendix 1 of the Supply Agreement. It also extended the term of the Supply Agreement to December 31, 2018.

26. On March 26, 2018, the GE Renewable Energy business revised its standard terms of purchase, but retained the same title: “GE Renewable Energy Terms of Purchase Rev. A – U.S.” (the “2018 Purchase Terms”). The 2018 Purchase Terms contain the same express warranty and indemnification language as the 2016 Purchase Terms.

27. In addition, the 2018 Purchase Terms define “Serial Defect” to mean “the same defect or non-conformity . . . in twenty percent (20%) or more of the Supplier’s components.” If a Serial Defect is found to exist, the Supplier is required to repair or replace the defective or non-conforming parts in accordance with the warranty provisions. In addition: “With respect to any additional parts or components that have not yet failed, the Supplier shall extend the warranty period for the part or component identified as having a Serial Defect for an additional twenty-four (24) months after expiration of the original warranty period.”

28. GERNA issued the first PO for SKF main bearings on November 28, 2017. In 2017, 2018 and 2019, GERNA issued a total of 76 POs for SKF main bearings, with the last PO issued in June 2019. Each PO states that the GE Renewable Terms of Purchase Rev. A – U.S. applies to the order, and references a website for obtaining a copy of the purchase terms. Each

PO also references the SKF part number and, in most cases, also references the GE technical specification for the part.

29. SKF accepted each of these POs and supplied the SKF main bearings ordered by GERNA.

Premature Failure of SKF Bearings

30. In April 2021, an SKF main bearing at a wind farm in Iowa experienced a failure. A site team doing unrelated work on the tower heard unusual noises coming from the main bearing area and found fractured roller pieces that had been ejected from the main bearing. The main bearing was removed and a tear-down inspection was conducted. Substantial spalling and cracking was found on the downwind row of rollers from within the main bearing. This type of failure was unusual both because it occurred after only about two years of operation and because the rollers are normally not the first part of a main bearing to exhibit fatigue (it is usually the raceway).

31. Following this first failure, there were numerous similar failures of SKF main bearings. In some cases, the failures resulted in rollers ejected from the bearings. Early signs of these failures have been detected using a standard monitoring system with a newly-developed algorithm formulated to detect signs of impending failure by looking for acceleration and vibration frequencies associated roller spalling. As of May 2023, GE had detected 389 potential failures of SKF main bearings using these methods. In each instance, GE sent SKF a notice of the potential failure via email specifying the turbine, the part serial number and the date of commercial operation. Subsequent failures and tear downs have confirmed that these failures involved the same set of issues, including roller spalling and cracking within in the main bearing.

32. Most of the SKF main bearing failures have occurred at a handful of wind farms.

Each of these sites has wind turbines with SKF main bearings interspersed with wind turbines using main bearings from other manufacturers that have not experienced similar failures.

33. GERNA is currently in the process of replacing the SKF main bearings that have failed or are exhibiting signs of failure. The cost of replacement is substantial because, in each case, the shaft and main bearing must be removed from the turbine housing using a heavy crane and a team of skilled workers. The average cost to GERNA for each replacement has been approximately \$280,000. Thus, the replacement cost for all 389 known failures as of May 2023 will be at least \$107 million. In addition, GERNA has been required to pay liquidated damages to its wind farm customers for the down time of wind turbines with failed bearings. GERNA also incurred significant legal fees in connection with seeking recovery from SKF.

34. GERNA expects new failures of SKF main bearings to continue to be detected. Indeed, it is possible that all SKF main bearings in commercial operation will need to be replaced well within their intended useful life of 20 years. If necessary, the cost to replace all SKF main bearings in commercial use would be at least \$386 million.

Attempts to Identify a Root Cause

35. GERNA notified SKF immediately after the first failure. GERNA also invited SKF to participate in a joint root cause analysis (“RCA”), which was active from April 2021 until July 2022. The RCA involved tear-down inspections of failed main bearings and collaboration between engineers at GERNA and SKF. Unfortunately, neither GERNA nor SKF has been able to determine a root cause of the failures. To date, no specific defect in design, material or workmanship has been confirmed. By the same token, no external cause, such as an environmental condition or maintenance issue has been found to be a causal factor.

36. On November 23, 2021, Gerna and SKF entered a Confidentiality, Standstill and Tolling Agreement (the “Tolling Agreement”) referencing potential claims arising from the SKF main bearing failures and tolling any applicable statutes of limitations. On March 29, 2023, GE sent SKF a notice of termination of the Tolling Agreement, effective thirty (30) days from the date of the notice of termination (the “Notice of Termination”). Pursuant to the Notice of Termination, the Tolling Agreement was terminated effective April 28, 2023.

37. The failures of SKF main bearings represent a Serial Defect under the Supply Agreement and the various Purchase Terms. On May 27, 2022, Gerna sent a “Notice of Serial Defect” letter to SKF citing the 178 SKF main bearing failures that had occurred as of that date. The letter states: “Pursuant to Appendix 2, Section 9, of the Supply Agreement and Section 9 of the GE Renewable Energy Terms and Conditions, GE provides Notice to SKF that certain mainshaft bearings have failed to meet the warranties set forth in the Agreements.”

38. On July 15, 2022, SKF sent a letter to Gerna purporting to state the result of the RCA. The letter reviews the analysis conducted in connection with RCA, but does not mention the 20-year service life set forth in the technical specification. Nevertheless, the SKF letter states that “the products were in compliance with the technical specifications” and that “SKF is not in breach of its contractual warranty.” The letter openly acknowledges, however, that no root cause has been identified. The letter states: “Until a specific root cause is determined, GE should continue with recommended mitigation activities.”

39. Gerna responded by letter dated January 13, 2023. In this response, Gerna disagreed with the “self-serving” conclusions of the SKF letter. Gerna observed that, although no root cause had been identified through the RCA process, it was clear that failed SKF main

bearings do not conform to the technical specification, which requires the main bearings to last for 20 years or more.

Other Settlement Discussions

40. GERNA has negotiated with SKF in good faith to resolve potential claims arising from the SKF main bearing failures. GERNA has also attempted in good faith to mediate this dispute. All conditions precedent to the commencement of this action have occurred or have been waived by SKF.

41. Between May 2021 to May 2022, GERNA met regularly with SKF in connection with the RCA. Among other topics, the parties discussed the impact of the main bearing failures on GERNA's installed base of products, the implications of a Serial Defect and how the parties can best resolve the situation. These meetings did not result in any mutual agreement resolving GERNA's claims.

42. In May 2022, GERNA proposed an in-person meeting between senior management of GERNA and SKF. The stated purpose of the meeting was to discuss financial sharing relating to failed SKF bearings. SKF did not agree to schedule such a meeting.

43. In June 2022, senior management of GERNA and SKF conferred by telephone to discuss potential settlement relating to the main bearing failures. No resolution was reached from that telephone call.

44. In December 2022, GERNA made another attempt at settlement by delivering a settlement proposal to SKF. The parties did not reach any agreement at that time.

45. In March 2023, SKF delivered a settlement proposal to GERNA. Again, the parties did not reach any agreement.

46. In May 2023, GERNA attempted to renew settlement discussions by proposing an in-person meeting of high-level representatives from both sides. SKF demurred, indicating that

an in-person meeting would be premature based on the previous exchange of settlement proposals.

47. In July 2023, GERNA proposed that the parties engage in formal mediation of the dispute over the SKF main bearing failures, citing the mediation requirement in the 2018 Standard Terms and the Tolling Agreement. SKF did not agree to mediation of the dispute.

48. After this action was commenced, the parties have continued to engage in good faith settlement discussions. On February 15, 2024, senior management of GERNA and SKF held an in-person settlement conference at a GE facility near Schenectady, New York. No resolution of the parties' dispute was reached at that meeting.

**First Claim for Relief
Breach of Contract**

49. GERNA repeats and realleges the factual allegations in paragraphs 1 through 48 as if set forth fully herein.

50. GERNA and SKF were parties to a series of POs for main bearings designed and manufactured by SKF from 2017 to 2019. Each PO incorporated by reference the GE technical specification for the main bearing which requires, among other things, a useful life of 20 years. The POs were governed by the Supply Agreement and by either the 2016 Purchase Terms or the 2018 Purchase Terms.

51. SKF delivered main bearings to GERNA pursuant to the POs. GERNA has fully performed its obligations under the POs, including by paying the purchase price for the main bearings delivered by SKF.

52. The main bearings supplied by SKF have begun to fail after only two or three years of commercial operation. As of May 2023, failures have been detected in 389 main bearings supplied by SKF.

53. These premature failures indicate that the failed main bearings did not conform to the technical specification at the time of delivery. Such non-conformity was not detectable or discoverable upon delivery of the main bearings, and only became known when the failures took place.

54. The short useful life of these main bearings has substantially impaired their value to Gerna. As a result of the failures, Gerna has either replaced or made plans to replace all the SKF main bearings that have failed to date. The total cost of replacing all failed main bearings known as of May 2023 is approximately \$107 million.

55. Gerna notified SKF of the first main bearing failure immediately and provided prompt notice to SKF of each subsequent main bearing failure.

56. SKF breached the POs by delivering main bearings that did not conform to the terms of the PO, including the GE technical specification for the part. Instead of delivering main bearings that would last for 20 years, SKF delivered main bearings that lasted, in some cases, only two to three years.

57. Section 2-714 of the Uniform Commercial Code provides that, as long as notification of the breach has given to the seller, the buyer “may recover damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller’s breach as determined in any manner which is reasonable.”

58. As a direct and proximate result of these contract breaches, Gerna has incurred roughly \$107 million costs to replace the SKF main bearings that have failed. To date, SKF has not provided any reimbursement to Gerna for these replacement costs.

59. GERNA has incurred other costs directly and proximately resulting from the failure of SKF main bearings, including liquidated damages owed to wind farms for unexpected shutdown of wind turbines using SKF main bearings.

60. By reason of the foregoing, GERNA seeks judgment for monetary damages, in a sum to be determined at trial, plus interest, costs, and expenses.

**Second Claim for Relief
Breach of Express Warranty**

61. GERNA repeats and realleges the factual allegations in paragraphs 1 through 60 as if set forth fully herein.

62. GERNA and SKF were parties to a series of POs for main bearings designed and manufactured by SKF from 2017 to 2019. Each PO incorporated by reference the GE technical specification for the part which requires, among other things, a useful life of 20 years. The POs were governed by the Supply Agreement and by either the 2016 Purchase Terms or the 2018 Purchase Terms.

63. The 2016 Purchase Terms apply to POs issued before March 26, 2018. The 2018 Purchase Terms apply to POs issued after March 26, 2018.

64. The 2016 Purchase Terms and the 2018 Purchase Terms each set forth the same express warranties. They warrant that goods provided will be free from all defects in design, workmanship and material, fit for the particular purpose for which they are intended and provided in strict accordance with all specifications, samples, drawings, designs and descriptions or other requirements approved or adopted by GERNA.

65. SKF supplied main bearings to GERNA pursuant to the POs. GERNA has fully performed its obligations under the POs, including by paying the purchase price for the main bearings supplied by SKF.

66. The main bearings delivered by SKF have begun to fail after only two or three years of commercial operation. As of May 2023, failures have been detected in 389 main bearings delivered by SKF.

67. The short useful life of these main bearings has substantially impaired their value to Gerna. As a result of the failures, Gerna has either replaced or made plans to replace all the SKF main bearings that have failed to date. The total cost of replacing all failed main known as of May 2023 is approximately \$107 million.

68. Gerna notified SKF of the first main bearing failure immediately and provided prompt notice to SKF of each subsequent main bearing failure.

69. SKF breached the express warranties in the 2016 Purchase Terms and the 2018 Purchase Terms by delivering main bearings that have failed after only two or three years of commercial operation.

70. In the alternative, SKF breached the express warranties set forth in the Purchase Terms appended to the Supply Agreement, which warrant that goods provided will be free from all defects in workmanship and material, in strict accordance with all specifications, samples, drawings, designs, descriptions or other requirements made by Gerna and designed to meet Gerna's specifications.

71. As a direct and proximate result of these warranty breaches, Gerna has incurred roughly \$107 million costs to replace the SKF main bearings that have failed. To date, SKF has not provided any reimbursement to Gerna for these replacement costs.

72. Gerna has incurred other costs directly and proximately resulting from the failure of SKF main bearings, including liquidated damages owed to wind farms for unexpected shutdown of wind turbines using SKF main bearings.

73. By reason of the foregoing, GERNA seeks judgment for monetary damages, in a sum to be determined at trial, plus interest, costs, and expenses.

Third Claim for Relief
Breach of Implied Warranty of Fitness for Particular Purpose

74. GERNA repeats and realleges the factual allegations in paragraphs 1 through 73 as if set forth fully herein.

75. SKF designed main bearings for GERNA to meet the GE technical specification for the part. The technical specification indicates that the part was intended to be used in GE wind turbines for power generation and that the part was expected to have a useful life of 20 years.

76. After completing the design, SKF manufactured and delivered main bearings to GERNA pursuant to POs that incorporated the GE technical specification by reference.

77. SKF was on notice that GERNA intended to use the main bearings in GE wind turbines for power generation and that the main bearings were expected to have a useful life of 20 years.

78. Pursuant to Section 2-315 of the Uniform Commercial Code, SKF warranted that the main bearings were fit to be used in wind turbines for power generation and would have a useful life of 20 years.

79. The main bearings supplied by SKF have begun to fail after only two or three years of commercial operation. As of May 2023, failures have been detected in 389 main bearings supplied by SKF.

80. The short useful life of these main bearings has substantially impaired their value to GERNA. As a result of the failures, GERNA has either replaced or made plans to replace all

the SKF main bearings that have failed to date. The total cost of replacing all failed main known as of May 2023 is approximately \$107 million.

81. GERNA notified SKF of the first main bearing failure immediately and provided prompt notice to SKF of each subsequent main bearing failure.

82. SKF breached the implied warranty of fitness for particular purpose by delivering main bearings that have failed after only two or three years of commercial operation.

83. As a direct and proximate result of these warranty breaches, GERNA has incurred roughly \$107 million costs to replace the SKF main bearings that have failed. To date, SKF has not provided any reimbursement to GERNA for these replacement costs.

84. GERNA has incurred other costs directly and proximately resulting from the failure of SKF main bearings, including liquidated damages owed to wind farms for unexpected shutdown of wind turbines using SKF main bearings.

85. By reason of the foregoing, GERNA seeks judgment for monetary damages, in a sum to be determined at trial, plus interest, costs, and expenses.

Fourth Claim for Relief Indemnification

86. GERNA repeats and realleges the factual allegations in paragraphs 1 through 85 as if set forth fully herein.

87. GERNA and SKF were parties to a series of POs for main bearings designed and manufactured by SKF from 2017 to 2019. Each PO incorporated by reference the GE technical specification for the main bearing which requires, among other things, a useful life of 20 years. The POs were governed by the Supply Agreement and by either the 2016 Purchase Terms or the 2018 Purchase Terms.

88. The 2016 Purchase Terms apply to POs issued before March 26, 2018. The 2018 Purchase Terms apply to POs issued after March 26, 2018.

89. The 2016 Purchase Terms and the 2018 Purchase Terms each provide for indemnification of GERNA by SKF. Specifically, they provide that Supplier shall indemnify Buyer for all costs and expenses, including attorneys' fees, arising from any act or omission of Supplier, except to the extent attributable to the gross negligence of Buyer.

90. SKF delivered main bearings to GERNA pursuant to the POs. GERNA has fully performed its obligations under the POs, including by paying the purchase price for the main bearings delivered by SKF.

91. The main bearings supplied by SKF have begun to fail after only two or three years of commercial operation. As of May 2023, failures have been detected in 389 main bearings supplied by SKF.

92. These premature failures indicate that the failed main bearings did not conform to the technical specification at the time of delivery. The delivery of non-conforming parts is an act or omission of SKF.

93. As a result of the failures, GERNA has either replaced or made plans to replace all the SKF main bearings that have failed to date. The total cost of replacing all failed main known as of May 2023 is approximately \$107 million.

94. GERNA has incurred other costs directly and proximately resulting from the failure of SKF main bearings, including (i) liquidated damages owed to wind farms for unexpected shutdown of wind turbines using SKF main bearings and (ii) legal fees incurred in connection with this action.

95. GERNA is entitled to indemnification from SKF for all costs and expenses arising from the main bearing failures.

96. By reason of the foregoing, GERNA seeks judgment for indemnification, in a sum to be determined at trial, plus interest, costs, and expenses.

Fifth Claim for Relief
Declaratory Judgment of Liability for Future Failures

97. GERNA repeats and realleges the factual allegations in paragraphs 1 through 96 as if set forth fully herein.

98. A total of 1,766 SKF main bearings were used in GE wind turbines in commercial operation. As of May 2023, failures of 389 SKF main bearings have been detected.

99. It is reasonably foreseeable that additional SKF main bearings will fail in the future within the intended 20-year useful life of the main bearings. Such future failures will require GERNA to incur substantial expense to replace the main bearings.

100. SKF has denied any responsibility for past failures of SKF main bearings. It may be inferred that SKF will deny responsibility for future failures of SKF main bearings as well. Thus, there is a genuine dispute between GERNA and SKF involving a substantial legal interest, and a declaration concerning the liability of SKF for future main bearing failures will have substantial practical effect.

101. SKF is liable for past main bearing failures under theories of breach of contract, breach of express warranty, breach of implied warranty and indemnification.

102. Accordingly, GERNA is entitled to a judgment declaring SKF liable for costs and expenses associated with future main bearing failures detected within the first 20 years of commercial operation.

Request for Relief

WHEREFORE, plaintiff GERNA requests the following relief:

- a) Judgment against SKF for the replacement costs associated with known failures of SKF main bearings, which currently total at least \$107 million;
- b) Judgment against SKF for other costs associated with known failures of SKF main bearings in an amount to be determined at trial;
- c) Judgment against SKF for costs and expenses, including legal fees, incurred in connection with this action;
- d) Declaratory judgment that SKF shall be liable for costs associated with future failures of SKF main bearings detected within the first 20 years of commercial operation;
- e) Pre-judgment and post-judgment interest as provided by applicable law; and
- f) Such other and further relief as the Court may deem just and proper.

Dated: February 20, 2024

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